

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Donald Andrew Driggs,

BKY Case No.: 08-41984

Debtor.

Chapter 11

**DEBTOR'S RESPONSE TO STATE BANK OF DELANO'S
MOTION FOR RELIEF FROM STAY REGARDING BOAT**

Donald Andrew Driggs (the "Debtor") respectfully submits this response to the Motion for Relief From Stay ("Motion") filed by the State Bank of Delano ("Bank"). The Motion must be denied.

To determine whether the Motion should be granted, or denied, it is necessary for this Court to determine the validity, priority or extent of the Bank's claimed lien interest in the Debtor's 1927 Hutchinson boat ("Boat"). Pursuant to Federal Rule of Bankruptcy Procedure 7001(2) and (9), this determination must be made in an adversary proceeding. As will be discussed below, the validity of the Bank's lien is disputed. In addition, it appears that the interest rate charged is usurious.

The Bank failed to require the Debtor to obtain a title to the Boat. Minnesota Statute § 86B.880 provides as follows:

86B.880 SECURITY INTERESTS.

Subdivision 1. Validity. Unless excepted by section 86B.875¹, a security interest in a titled watercraft is not valid against creditors of the owner or subsequent transferees or secured parties of the watercraft unless perfected as provided in this chapter.

¹ This section is inapplicable.

Subd. 2. Perfection. A security interest is perfected by the delivery to the commissioner of the existing certificate of title, if any, or an application for a certificate of title, containing the name and address of the secured party, the date of the security agreement, and the required fee. A security interest is perfected as of the time of the delivery. The method provided in this chapter is exclusive.

Here, it is not disputed that the Bank does not appear on any certificate of title. It is also not disputed that there is in fact no certificate of title (a boat manufactured prior to August 1, 1979 is not required to have a certificate of title, pursuant to Minnesota Statute § 86B.825.) Apparently, the Bank believes that because the boat is not a “titled watercraft” no naming of the bank is required on a certificate of title. However, pursuant to such chapter an owner may voluntarily title a boat that is not required to have a certificate of title. See 86B.825, sbud. 3.

As such, the more appropriate reading of the language in section 86B.880 requires a person seeking to take a security interest in a watercraft manufactured prior to August 1, 1979 to require the debtor to apply for a certificate of title naming the party with a security interest in such application. This is supported by the language in 86B.880, subd. 2, which provides that a *“security interest is perfected by the delivery to the commissioner of the existing certificate of title, if any, or an application for a certificate of title”* and the *“method provided in this chapter is exclusive.”*

In addition to the Bank’s failure to properly perfect its alleged security interest, the Bank intentionally charged illegal interest. Minnesota Statute Section 334.01 prohibits interest in excess of 6%. However, if a loan is for “business or agricultural purposes,” interest may be charged at a rate “of not more than 4-1/2 percent in excess of the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District encompassing Minnesota.” See Minn. Stat. § 334.011. Here, while it unclear if the loan at

issue was for "business purposes," the interest rate charged is 12%, meaning to be proper the discount rate would have had to be 7.5%, which in 2006 would have been extremely unlikely. As such, the loan is usurious. Because the Bank's loan is usurious, aside from other remedies, the alleged security interest is invalid. See Minn. Stat. § 334.03.

Finally, the Bank argues that relief should be granted because the Boat is not insured. The Bank, however, waived any requirement for insurance. See Exhibit A.

Accordingly, because the Bank's lien is invalid, its loan is usurious and the Bank waived any insurance requirement, the Bank's motion should be denied.

Dated: September 9, 2008

HINSHAW & CULBERTSON LLP

By: /e/ Jamie R. Pierce
Thomas G. Wallrich (213354)
Jamie R. Pierce (305054)
Suite 2000
333 South Seventh Street
Minneapolis, MN 55402-4511
Telephone (612) 334-2514

ATTORNEYS FOR DEBTOR

VERIFICATION

I, Donald A. Driggs, the Debtor herein, hereby certify under penalty of perjury, that the statements contained in the foregoing response are true and correct to the best of my knowledge, information and belief and that Exhibit A is a true and correct copy of an Agreement to Provide Insurance on which the Bank's President, Steven Gilmer, wrote "waived" and which he also initialed.

Dated: September 9, 2008


Donald A. Driggs

AGREEMENT TO PROVIDE INSURANCE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$25,000.00	12-29-2005	03-01-2006	32595	670	111283	011	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Grantor: Donald A. Driggs
2925 Casco Point Road
Wayzata, MN 55391

Lender: State Bank of Delano
1300 Babcock Blvd East, PO Box 530
Delano, MN 55328-0530

INSURANCE REQUIREMENTS. I, Donald A. Driggs ("Grantor"), understand that insurance coverage is required in connection with the extending of a loan or the providing of other financial accommodations to me by Lender. These requirements are set forth in the security documents for the loan. The following minimum insurance coverages must be provided on the following described collateral (the "Collateral"):

Collateral: 1927 Hutchinson 30' Wood Boat w/Chrysler 38C CI Engine.

Type: All risks, including fire, theft and liability.

Amount: Full Insurable Value.

Basis: Replacement value.

Endorsements: Lender loss payable clause with stipulation that coverage will not be cancelled or diminished without a minimum of 30 days prior written notice to Lender.

Deductibles: \$500.00.

Latest Delivery Date: By 10 days after the loan closing date.

INSURANCE COMPANY. I may obtain insurance from any insurance company I may choose that is reasonably acceptable to Lender. I understand that credit may not be denied solely because insurance was not purchased through Lender.

FAILURE TO PROVIDE INSURANCE. I agree to deliver to Lender, on the latest delivery date stated above, proof of the required insurance as provided above, with an effective date of December 29, 2005, or earlier. I acknowledge and agree that if I fail to provide any required insurance or fail to continue such insurance in force, Lender may do so at my expense as provided in the applicable security document. The cost of any such insurance, at the option of Lender, shall be added to the indebtedness as provided in the security document. I ACKNOWLEDGE THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBT, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, MY EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

AUTHORIZATION. For purposes of insurance coverage on the Collateral, I authorize Lender to provide to any person (including any insurance agent or company) all information Lender deems appropriate, whether regarding the Collateral, the loan or other financial accommodations, or both.

I ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREE TO ITS TERMS. THIS AGREEMENT IS DATED DECEMBER 29, 2005.

*Waived
DRG*

GRANTOR:

X COPY

Donald A. Driggs

**FOR LENDER USE ONLY
INSURANCE VERIFICATION**

DATE: _____ **PHONE** _____

AGENT'S NAME: _____

AGENCY: _____

ADDRESS: _____

INSURANCE COMPANY: _____

POLICY NUMBER: _____

EFFECTIVE DATES: _____

COMMENTS: _____

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

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Donald Andrew Driggs,

Debtor.

Chapter 11 Case

PROOF OF SERVICE

Deanna R. Elofson, an employee of Hinshaw & Culbertson LLP, and in the course of said employment on September 9, 2008, caused the following documents:

1. Debtor's Response to State Bank of Delano's Motion for Relief from Stay Regarding Boat and Exhibit A

to be served on the parties on the attached service list by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail and to be filed electronically with the Clerk of Court through ECF, and that a copy of the above-referenced documents will be delivered to the people listed below who are Filing Users, by automatic e-mail notification pursuant to the Electronic Case Filing System and this notice constitutes service or notice pursuant to Local Rule 9006-1(a).

Alice A Blanco bkmail@mccalla.com
Christopher A Camardello ccamardello@winthrop.com
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US Trustee ustpregion12.mn.ecf@usdoj.gov
Sarah J Wencil Sarah.J.Wencil@usdoj.gov

Dated: September 9, 2008

/e/ Deanna R. Elofson
Deanna R. Elofson

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650 Galtier Plaza
380 Jackson Street
St. Paul, MN 55101

MN Dept. of Revenue
Coll Enf Unit
551 Bky Sec., P.O. Box 64447
St. Paul, MN 55164

District Director of IRS
30 East 7th Street
Stop 5700
Suite 1222
St. Paul, MN 55101

US Attorney
300 South Fourth Street
#600
Minneapolis, MN 55415

Internal Revenue Service
STOP 5700
30 E. 7th Street
Suite No. 1222
St. Paul, MN 55101

Peter Dahl
6600 France Avenue South
Suite 125
Edina MN 55435

Aurora Loan Services
2617 College Park
P.O. Box 1706
Scottsbluff NE 69363-1706

Aurora Loan Services
10350 Park Meadows Drive
Littleton CO 80124

Chase Home Finance
P.O. Box 78116
Phoenix AZ 85062

Chase Manhattan Bank
P.O. Box 830016
Baltimore MD 21283-0016

Citimortgage
P.O. Box 7706
Springfield OH 45501

Commerce Bank
P.O. Box 398048
Edina MN 55439

Crown Bank
6600 France Avenue South
Suite 125
Edina MN 55435

First Nat'l Bank of the Lakes
2445 Shadywood Road
Navarre MN 55391

Heritage Bank
310 1st Street SW
P.O. Box 1124
Willmar MN 56201-1124

Home Federal Savings Bank
1016 Civic Center Drive NW
Suite 400, P.O. Box 6057
Rochester MN 55903

Indymac Bank Home Loan
7700 W. Parmer Lane
Building D, 2nd Floor
Austin TX 78729

JT & TJ Inc.
21 Century Avenue South
Saint Paul MN 55119

St. Stephens Bank
3950 3rd Street N.
Saint Cloud MN 56303

State Bank of Delano
1300 Babcock Blvd. East
P.O. Box 530
Delano MN 55328-0530

Wachovia Mortgage
P.O. Box 659558
San Antonio TX 78265-9558

Wells Fargo Home Mortgage
P.O. Box 1225
Charlotte NC 28201-1225

Hennepin County Treasurer
A-600 Government Center
Minneapolis MN 55487-0060

Kandiyohi County
PO Box 896
Willmar MN 56201-0896

Wright County Auditor
10 Second Street NW
Room 232
Buffalo MN 55313-1194

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Tony Johnson, Blainey &
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990 Inwood
Oakdale MN 55128

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Centerpoint Energy
P.O. Box 1144
Minneapolis MN 55440-1144

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Cardmember Services
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Palatine IL 60094-4014

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Marilyn Wasik
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Romer & Company
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Minneapolis MN 55404

Xcel Energy
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Minneapolis MN 55484-9477

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